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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	CC Docket No. 96-128 DA 97-2214

REPLY COMMENTS OF PEOPLES TELEPHONE COMPANY, INC.

Peoples Telephone Company, Inc. respectfully submits these reply comments in the above-captioned docket regarding the requests of the United States Telephone Association, the LEC ANI Coalition, and TDS Communications Corporation for waivers of the requirement that local exchange carriers ("LECs") provide payphone-specific coding digits to assist compensation payers in tracking calls in order to pay payphone compensation and AT&T's response to this request. As one of the largest independent payphone service providers in the U.S., Peoples is concerned about the LECs' and IXCs' tactics to continue to delay paying fair compensation to payphone service providers for calls originating from their payphones.

ARGUMENT

The Commission must not permit the LECs and IXCs to continue to frustrate the Congressionally mandated implementation of § 276, requiring the Commission to ensure that payphone service providers ("PSPs") are properly compensated for "each and every completed intrastate and interstate call." The Commission's felt need to grant a waiver on its own motion is

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itself evidence enough that § 276 has been met with widespread resistance and non-compliance. The Commission should not now capitulate to the LECs and IXCs and grant them industry wide waivers. As the American Public Communications Council ("APCC") pointed out in their initial comments, the Commission does not have the authority to grant industry wide waivers, divorced from the facts and circumstances of individual IXC and LEC circumstances.[1] Rather, if the Commission grants the requested waivers, it should do so only where *individual* parties meet the requisite showing that special circumstances warrant a deviation from rule *and* that such a deviation from the rule will be in the public's interest.[2]

While the LECs and IXCs continue to stonewall, and the Commission considers granting blanket industry wide waivers, PSPs face economic disaster. In *Illinois Public Telecommunications Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), the federal court of appeals for the District of Columbia vacated the Commission's provisional compensation regime for PSPs, thus removing the default compensation system that the Commission designed to serve as a stop gap. With the default compensation system invalidated, the failure of the Commission timely to implement § 276's mandate for per call compensation means that PSPs are receiving compensation dramatically below the level that the Commission previously determined was fair.[3] Therefore, if the Commission does grant the IXCs a waiver, it must also adopt guidelines

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1 *Comments of The American Public Communications Council* at 12-13.

2 *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

3 *See APCC* at Attachment 1 (Form letter from Sprint to PSPs informing them that Sprint had discontinued payments under the FCC's interim compensation orders and had instead unilaterally decided to make payments of approximately $1.42 per payphone per month, an amount that "reflects Sprint's belief that a reasonable cost-based rate for per-call compensation is in the neighborhood of ten cents per call, rather than the 35 cent default rate adopted by the FCC).

ensuring that PSPs are fairly compensated in the interim. Peoples supports APCC's proposal for the Commission to enact principles of compensation that PSPs receive flat-rate payments on a monthly basis that are based upon APCC's current estimate of average dial-around call volumes per payphone per month.[4]

As APCC argued in their initial comments, the issue of the waiver determination is integrally related to the still unresolved substantive question about which of the coding digit transmissions alternatives will be permitted to implement per-call compensation.[5] Of the four alternatives, only Flex ANI enjoys the ability both to readily identify the PSP's identity and permit IXCs to block payphone calls on demand. With USTA's recent concession that implementation of FLEX ANI would cost only one tenth of their initial estimate, the only claimed disadvantage for FLEX ANI has now disappeared. The Commission should take this opportunity to state unequivocally that the LECs should universally implement FLEX ANI.

Together with a decision about the nature of the ANI digit service that is required, it is also incumbent upon the Commission to establish a firm and unalterable deadline for the system conversion. To that end, Peoples supports APCC's call to the Commission to adhere to the March 9, 1998 deadline established in the Payphone Order. A deadline unsupported by sanctions, however, will not provide the necessary encouragement to the IXCs and LECs to adhere to the March 9 deadline. Therefore the Commission must simultaneously adopt a mechanism whereby those IXCs and LECs that fail to comply with the deadline will be

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4 *APCC* at 24.

5 *APCC* at 14.

sanctioned. In particular, Peoples agrees with APCC that any LEC that fails to adhere to the March 9 deadline will be unable to receive any payphone compensation.

CONCLUSION

For the reasons stated herein, Peoples requests that the Commission establish which of the coding digit alternatives the LECs must provide and adopt guidelines to ensure that the PSPs are timely and fairly compensated.

Respectively submitted,
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